IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4862 OF 2007.
IN
FIRST APPEAL ST.NO.21729 OF 2007.

Vellath Gopal Nair & others. ... Applicants.
Versus.
Municipal Corporation of Greater Mumbai and others. ... Respondents.

Shri J.P.Sen i/by M/s.Mehta and Girdharlal for the Applicants.

Ms.Nisha Dabhade for Respondent No.1.

Shri Yadav holding for Shri D.R.Shah for Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 12th October, 2007.

P.C.:

1. Heard the learned Counsel for the Applicant. Rule. The learned Advocates appearing for the 1st and 3rd Respondents waive service. The 2nd Respondent is already dead.

2. The Application is for condonation of delay in preferring an Appeal for challenging the Judgment and Decree passed by the learned Judge of the City Civil Court in S.C.Suit No.2345 of 1987.

3. By a common Judgment, Suit No.2345 of 1987 and Suit No.5879 of 1982 were decided. The Applicants herein preferred First Appeal No.58 of 1999 by which they challenged the Judgments and Decrees passed in both

the suits. The said appeal was admitted on 21st April 1999. It appears that in February 2004, an objection was raised by the office to the effect that against the decrees passed in two suits one First Appeal was not competent,. On 19th February 2006, Registrar (Judicial-I) passed an order rejecting the submission of the Counsel for the Applicants that the said First Appeal No.58 of 1999 shall be treated as a joint appeal against both the Judgments and Decrees. In the same order, a statement of the learned Counsel appearing for the Applicant was recorded that the Applicants will make an application for treating the said Appeal as preferred as against the Judgment and Decree in one suit.

4. Thereafter the present Appeal has been preferred by the Applicant wherein the challenge is confined to the Decree passed in Suit No.2345 of 1987.

5. Considering the aforesaid circumstances, there is a long delay in preferring the present Appeal. The Application for condonation of delay is objected to by the Advocates appearing for the contesting Respondents by pointing out that the objection in the First Appeal No.58 of 1999 was raised in the year 2004. However, as pointed out above, an order has been passed by the Registrar (Judicial-I) on 19th December 2006 in First Appeal No.48 of 1999. It is true that after 19th

December 2006, the present Appeal could have been filed early. Therefore, though delay deserves to be condoned the Applicants will have to pay costs to the 1st and 3rd Respondents.

6. Accordingly, the Civil Application is disposed of by the following order:

i) The Application is allowed in terms of prayer clauses (a) and (b), subject to condition of the Applicants paying costs of Rs.5000/- each to the 1st and 3rd Respondents within a period of six weeks from today.

ii) Filing of certified copy of the Judgment is dispensed with as the same is already filed in the companion First Appeal.

Judge.